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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

GUSTAVO STEVE SANCHEZ,

Petitioner,

v.

THE SUPERIOR COURT OF  
LOS ANGELES COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

B276406

(Los Angeles County  
Super. Ct. No. PA082452)

ORIGINAL PROCEEDING; petition for writ of mandate. Cynthia L. Ulfig, Judge. Petition granted with directions.

The Rodriguez Law Group, Ambrosio E. Rodriguez and Matthew J. Delgado for Petitioner.

No appearance for Respondent.

Jackie Lacey, District Attorney, Phyllis C. Asayama and John Harlan II, Deputy District Attorneys, for Real Party in Interest.

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Petitioner Gustavo Steve Sanchez seeks review of the July 28, 2016 order of the superior court (Hon. Cynthia L. Ulfig) denying his pretrial motion to change his plea from not guilty to not guilty by reason of insanity (NGI). We issued a stay pending this Court's resolution of the petition, and issued an order to show cause. The People filed a return on September 13, 2016. Sanchez did not file a reply to the return. We grant the petition.

### **BACKGROUND**

On November 10, 2014, the People filed a one-count felony complaint charging Sanchez with one count of murder (Pen. Code, § 187, subd. (a))<sup>1</sup> and with having personally discharged a firearm causing death (§ 12022.53). Sanchez was arraigned on the complaint on December 12, 2014, and entered a plea of not guilty. Throughout the case he has been represented by his current counsel.

Sanchez's preliminary hearing was held on December 16, 2015, and Sanchez was held to answer as charged. After a series of delays and continuances, the trial was scheduled for August 1, 2016. On July 21, 2016, Sanchez notified the district attorney that he intended to change his plea from not guilty to NGI. On July 28, 2016, the People announced that they were ready for trial but Sanchez's counsel indicated he was not ready for trial, and moved to enter an NGI plea and to have a psychologist appointed to evaluate Sanchez.

After the July 28, 2016 hearing, the court denied the motion. The court outlined the history of the procedure of the case and multiple continuances of the trial, including stating that she previously informed the parties that there would be no further continuances of the trial. Sanchez's counsel

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<sup>1</sup> Subsequent statutory references are to the Penal Code unless otherwise specified.

informed the court, in an in camera hearing, of the reasons for the delay in seeking to change Sanchez's plea, relating to his professional responsibilities. The court concluded that Sanchez was not timely in requesting the change. The court also discussed the merits of the proposed NGI plea.

## DISCUSSION

Denial of a motion to enter a plea of not guilty by reason of insanity is reviewed for abuse of discretion. (*People v. Montiel* (1985) 39 Cal.3d 910, 922-923 (*Montiel*)). A criminal defendant is permitted to change a plea to "not guilty by reason of insanity" prior to trial "for good cause shown," pursuant to section 1016, subdivision (6): "A defendant who does not plead guilty may enter one or more of the other pleas. A defendant who does not plead not guilty by reason of insanity shall be conclusively presumed to have been sane at the time of the commission of the offense charged; provided, that the court may for good cause shown allow a change of plea at any time before the commencement of the trial. A defendant who pleads not guilty by reason of insanity, without also pleading not guilty, thereby admits the commission of the offense charged."

In order to demonstrate "good cause" within the meaning of section 1016, "a defendant must show a plausible reason for delay in tendering any plea." (*People v. Lutman* (1980) 104 Cal.App.3d 64, 68 (*Lutman*)). This showing may be made "at any time before the commencement of the trial." (§ 1016.) In opposition to the petition, the People rely on *Montiel*, in which our Supreme Court affirmed the denial of a motion to change a plea from not guilty to NGI. In that case, however, the defendant's motion was made after the commencement of trial. The People also contend that Sanchez has not made the required showing of diligence, because it followed a delayed arraignment and five pretrial hearings over a seven month period, and

because the issue of mental illness was present throughout the proceedings. The court agreed, concluding that Sanchez's counsel was not diligent in bringing the motion to change his plea.

In support of his petition, Sanchez argues that he provided earlier notice to the People of his intent to change his plea, and that the People made no argument that they would be prejudiced by the change in plea. Further, he contends that the superior court did not permit him to be heard on the motion in open court, instead considering only counsel's in camera communication with the court, which was not shared with the People.

The court acknowledged that Sanchez's privately retained counsel was unavailable in the months leading up to Sanchez's trial date as a result of multiple professional obligations, including a trial of an attempted murder case. Further, we note that Sanchez himself stated at least once in the record that he wanted to plead NGI, which defense counsel reiterated at the July 28 hearing. A criminal defendant has a right to enter the plea of his choice. (*People v. Clemons* (2008) 160 Cal.App.4th 1243, 1253.) Each of these factors alone may be insufficient to establish the requisite diligence in Sanchez's request to change his plea. Considered together, however, the fact that the change of plea was requested prior to trial, with Sanchez's counsel providing a "plausible reason for delay in tendering [the] plea," that Sanchez previously sought to plead NGI, and the fact that the People failed to demonstrate prejudice resulting from the change in plea, it was an abuse of discretion to deny the motion to change Sanchez's plea. (*Lutman, supra*, 104 Cal.App.3d at p. 68.)

In addition to the discussion of the reason for the delay, the superior court considered the substance and merits of the NGI plea. This was error. (*Lutman, supra*, 104 Cal.App.3d at p. 68.)

For these reasons, we grant the petition and order the superior court to vacate its order denying Sanchez's motion to change his plea and enter a new and different order granting the motion.

**DISPOSITION**

The petition is granted. The superior court shall vacate its order denying the motion to change Sanchez's plea, and shall enter a new and different order granting the motion.

NOT TO BE PUBLISHED.

CHANNEY, Acting P. J.

We concur:

JOHNSON, J.

LUI, J.